

IN RE: DA VINCI SURGICAL ROBOT
ANTITRUST LITIGATIONUNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 21-cv-03825-AMO

OMNIBUS SEALING ORDER

Re: Dkt. No. 330

Before the Court are several Administrative Motions to Seal. The Court, having carefully considered the submissions, the record, the applicable law, and any arguments related thereto, hereby **GRANTS** the Administrative Motions.

LEGAL STANDARD

Pursuant to Civil Local Rule 79-5, the party seeking to file a document or portions of it under seal must explain “(i) the legitimate private or public interests that warrant sealing; (ii) the injury that will result if sealing is denied; and (iii) why a less restrictive alternative to sealing is not sufficient.” Civil L.R. 79-5(c)(1). The request must be “narrowly tailored to seal only the sealable material.” *Id.* at 79-5(c)(3). A party seeking to seal records must provide “compelling reasons” to overcome the “strong presumption in favor of access.” *Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 28 1178 (9th Cir. 2006); *see Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016). The standard derives from the “common law right ‘to inspect and copy public records and documents, including judicial records and documents.’” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana*, 447 F.3d at 1178). To overcome this strong presumption, the party seeking to seal judicial records must “articulate compelling reasons supported by specific factual findings . . . that outweigh the general

1 history of access and the public policies favoring disclosure, such as the public interest in
2 understanding the judicial process.” *Kamakana*, 447 F.3d at 1178-79 (citations omitted). The
3 party must make a “particularized showing” that “specific prejudice or harm will result” if the
4 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
5 1210-11 (9th Cir. 2002). It is in the “sound discretion of the trial court” to determine what
6 constitutes a “compelling reason” for sealing a court document. *Ctr. for Auto Safety*, 809 F.3d at
7 1097 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 599 (1978)). Compelling reasons
8 justifying sealing court records generally exist when such “court files might . . . become a vehicle
9 for improper purposes” such as “releas[ing] trade secrets,” *Kamakana*, 447 F.3d at 1179, or “as
10 sources of business information that might harm a litigant’s competitive standing,” *Ctr. for Auto*
11 *Safety*, 809 F.3d at 1097; *see In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (sealing
12 trade secret information about “the pricing terms, royalty rates, and guaranteed minimum payment
13 terms” in the parties’ licensing agreement). Records attached to nondispositive motions must
14 meet the lower “good cause” standard of Rule 26(c) of the Federal Rules of Civil Procedure, as
15 such records “are often unrelated, or only tangentially related, to the underlying cause of action.”
16 *Kamakana*, 447 F.3d at 1179-80 (quotations omitted).

DISCUSSION

18 The Court finds that compelling reasons exist to support the filing under seal of the
19 documents or portions thereof listed as “granted” in the following chart and grants the requests to
20 seal these documents or portions thereof where they appear on the public docket. The Court
21 appreciates the efforts of counsel to prepare the chart below, including citations to the relevant
22 docket entries. The Court repeats its admonishment that, while it grants sealing many of the
23 documents presented at this stage, it will be disinclined to permit sealing of materials presented in
24 a public trial. *See* Omnibus Sealing Order (ECF 233) at 3.

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	Document or title or description	Dkt. of publicly-filed version	Dkt. of sealed version	Dkt. of decl. in support of sealing	Party seeking sealing	Sealing sought	Brief statement of reason for sealing	Granted/Denied
Plaintiffs' Sealing Requests								
Glubbiak Dec. Ex. 6 – Mark Early Declaration	Dkt. 296.7	Dkt. 297.6	Early Decl., Dkt. 304.1	Larkin	Partial	The Early Class Declaration includes detailed information about confidential agreements between Larkin and Defendant Intuitive Surgical, Inc.; details about the negotiations that occurred between Larkin and Intuitive related to da Vinci robot repair and replacement, and equipment lease agreements; and detailed information regarding Larkin's finances and monies paid to Intuitive.	GRANTED	
Widman Declaration in Support of Intuitive's Opposition to Class Certification	Dkt. 288.2	Dkt. 289.2	Early Decl., Dkt. 304.1	Larkin	Partial	This document provides details pertaining to confidential agreements and negotiations between Larkin and Intuitive.	GRANTED	
Widman Declaration, Ex. 1	Dkt. 288.3	Dkt. 289.3	Early Decl., Dkt. 304.1	Larkin	Partial	This document provides details pertaining to confidential agreements and negotiations between Larkin and Intuitive.	GRANTED	
Hospital Plaintiffs' Response to Defendant Intuitive	Dkt. 301-1	Dkt. 300-2; Dkt. 313	Early Decl., Dkt. 304.1	Larkin	Partial Pg. 5, lines 3-11	These portions of this document provide details pertaining to	GRANTED	

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Plaintiffs' Sealing Requests								
1	Surgical, Inc.'s Objection to Certain Class Certification Reply Evidence						confidential agreements and negotiations between Larkin and Intuitive.	
	Document or title or description	Dkt. of publicly-filed version	Dkt. of sealed version	Dkt. of decl. in support of sealing	Party seeking sealing	Sealing sought	Brief statement of reason for sealing	Granted/Denied
Intuitive Sealing Requests								
10	Plaintiffs' Motion for Class Certification	Dkt. 267	Dkt. 268.1	Wong Dec., Dkt. 304.2	Intuitive	Pg. 10, redacted price on line 26 Pg. 17-18, redacted pricing policy and pricing figures on lines 17:27-18:24	See Wong Dec. ¶ 4, Omnibus Motion to Seal at Section III.B	GRANTED
11	Ex. 1 to the Declaration of Manuel J. Dominguez (Elhauge Class Report)	Dkt. 267.2	Dkt. 268.2	Wong Dec., Dkt. 304.2	Intuitive	Page 105, Figure 9 – Pricing Figures Page 110, n. 497 – Contract Prices Page 111, paragraph 219 and Figure 10 – Pricing figures Page 112, paragraph 220, Figure 11, and n. 504 – Pricing and Revenue Figures, Contract Prices Page 113, paragraph 221 – Gross margin figures Page 114, Figure 12, and	See Wong Dec. ¶ 4, Omnibus Motion to Seal at Section III.B	GRANTED
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Intuitive Sealing Requests															
9											paragraph 222 – Margin figures				
10											Page 128, paragraph 252 and n.582 – Customer identities				
11											Page 148, ns. 677, 678, 680, 681, 683 – Customer identities				
12											Page 160, paragraph 317 – Pricing figures				
13											Page 171, paragraph 340 – Pricing figures				
14											Page 172, paragraph 341 – Pricing figures				
15											Pages 173–74, paragraph 346 – Margin figures				
16											Page 174, paragraph 347 and n.809 – Margin figures				
17											Page 182, paragraph 368 – Customer identity				
18											Page 186, n.863 – Customer identities				
19											Page 191, paragraph 393 – Pricing figures				
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Intuitive Sealing Requests								
9						and n. 889 – Pricing figures		
10						Page 198, paragraph 405 – Pricing figures		
11						Page 199, paragraph 406, n. 919, n. 920 – Pricing figures		
12						Page 200, paragraph 408, 409, and n. 927 – Margin figures		
13						Page 201, paragraph 411, and n. 935 – Pricing figures, Contract prices, Customer identities		
14						Page 212, n.974 – Customer identity		
15						Page 256, paragraph 521 – Customer identity		
16						Page 260, n.1182 – Customer identity		
17						Page 261, n.1204 – Customer identity		
18						Page 285, paragraph 587 – Pricing figures		
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Intuitive Sealing Requests															
9											Page 294, n.1366 – Cost figures				
10											Page 296, n.1376 – Customer identity				
11											Page 300, n.1399 – Customer identity				
12											Page 302, paragraph 621 – Margin figures				
13											Page 303, paragraph 625 and 626 – Pricing figures				
14											Page 304, paragraph 626 and n. 1413 – Pricing figures				
15											Page 305, n. 1421– Pricing figures				
16											Page 306, paragraph 632 – Pricing figures				
17											Page 307, Table 3 – Pricing figures				
18											Page 326, paragraph 669 – Pricing figures				
19											Page 327, paragraph 670, n. 1535, and n. 1536 – Pricing figures				
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Intuitive Sealing Requests															
9											Page 328, paragraph 671 and n. 1545 – Margin figures				
10											Page 329, paragraph 672 and n.1551 – Margin figures				
11											Page 331, n.1559 – Customer identities				
12											Page 351, n. 1649 – Customer identities				
13											Page 361, paragraph 744 – Margin figures				
14											Page 362, paragraph 745 – Margin figures				
15											Page 402, paragraph 822 and n.1863 – Pricing figures				
16											Page 403, paragraph 823 and n. 1865 – Pricing figures				
17											Page 421, paragraph 863 – Customer identity				
18											Page 422, paragraph 865 and n.1935 – Pricing figures and strategy				
19											Page 423, paragraph 867 – Pricing figures				
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Intuitive Sealing Requests								
2						Page 424, paragraph 870 and n. 1958 – Pricing figures		
3						Page 425, paragraph 870, 871, 872, and n. 1961, 1962 – Pricing figures		
4						Page 426, paragraph 873 and n. 1968 – Customer identities		
5						Page 433, paragraph 883 – Pricing figures		
6						Page 448, Table 20 – Pricing figures		
7						Page 452, Table 22 – Pricing figures		
8						Page 455, paragraph 915 and 916 – Pricing figures, Specific customer identities and pricing figures		
9						Page 456, paragraph 916, 918, 2100, and n. 2102 – Pricing figures and specific customer identities and pricing		
10						Page 457, Figure 18 – Pricing figures		
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Intuitive Sealing Requests								
						Page 458, Table 23 – Pricing figures		
6	Ex. 11 to the Declaration of Manuel J. Dominguez (Intuitive-00067540)	N/A	Dkt. 267.12	Wong Dec., Dkt. 304.2	Intuitive	This document was provisionally sealed, then refiled as Dkt. 270, pursuant to the Court's previous sealing motion at Dkt. 246.	<i>See Wong Dec. ¶ 4, Omnibus Motion to Seal at Section III.B</i>	GRANTED
11	Ex. 23 to the Declaration of Manuel J. Dominguez (Intuitive-00203904)	Dkt. 267.24	Dkt. 268.8	Wong Dec., Dkt. 304.2	Intuitive	Page 2 – Specific discount and pricing figures Page 3 – Pricing strategy, specific discount and pricing figures	<i>See Wong Dec. ¶ 4, Omnibus Motion to Seal at Section III.B</i> This document was previously partially sealed (see Wong Decl. at Dkt. No. 143-1)	GRANTED
16	Intuitive's Opposition to Class Certification	Dkt. 288	Dkt. 289.1	Wong Dec., Dkt. 304.2	Intuitive	Page 4, Line 21 – Pricing figures Page 14, Lines 11-13 – Pricing figures Page 21, Line 22 – Settlement amount	<i>See Wong Dec. ¶¶ 4, 5 Omnibus Motion to Seal at Section III.B</i>	GRANTED
22	Widman Declaration in Support of Intuitive's Opposition to Class Certification	Dkt. 288.2	Dkt. 289.2	Wong Dec., Dkt. 304.2	Intuitive	Page 3, paragraphs 2 and 3 – Specific settlement amounts	<i>See Wong Dec. ¶¶ 4, 5 Omnibus Motion to Seal at Section III.B</i>	GRANTED
25	Widman Declaration, Ex. 1	Dkt. 288.3	Dkt. 289.3	Wong Dec., Dkt. 304.2	Intuitive	Full document – settlement negotiations and prices	<i>See Wong Dec. ¶¶ 4, 5 Omnibus Motion to Seal at Section III.B</i>	GRANTED

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Intuitive Sealing Requests								
1	Bass Dec. Ex. 1 - Expert Rebuttal Report of James W. Hughes	Dkt. 288.5	Dkt. 289.4	Wong Dec., Dkt. 304.2	Intuitive	Table of Contents, PDF Page 5 – Customer identities Page 5, paragraph 16 – Pricing figures Page 15, n.28 – Customer identities Page 16, Figure 5 – Pricing figures Page 22, Figure 10 and n.37 – Pricing figures, customer identities and specific customer prices Page 24, n.42 – Customer identities Page 25, ns.43, 44 – Pricing strategy, customer identities Page 29, paragraphs 38 and 40 – Pricing figures, customer pricing agreements Page 31, n.62 – Customer identities Page 33, paragraph 48 – Pricing strategy	See Wong Dec. ¶ 4 Omnibus Motion to Seal at Section III.B	GRANTED
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2	Intuitive Sealing Requests							
3						Page 34, paragraph 51, 52 and n. 74, 75, 76, 77 – Customer identities and customer pricing agreements		
4						Page 53, n. 128 – Customer pricing agreement		
5						Page 54, paragraph 88 – Pricing figures		
6						Page 55, paragraph 88 and n. 136 – Pricing figures		
7						Page 59, paragraph 95 – Pricing figures and customer identity		
8						Page 60, paragraph 95 and notes 146, 147, 148 – Pricing figures and customer identities		
9						Page 63, Table 1 – Pricing figures and customer identities		
10						Page 65, paragraph 97 and n. 153, 154, 155 – Pricing figures		
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Intuitive Sealing Requests															
9											Page 76, Figure 20 – Pricing figures				
10											Page 88, n.211 – Customer identities				
11											Page 89, paragraph 132 and n. 212, 213, 214 – Customer identities				
12											Page 90, paragraph 133, and n. 216 – Customer identities and pricing figures				
13											Page 91, paragraph 13 – Customer identities and pricing figures				
14											Page 92, Table 2 – Customer identities and pricing figures				
15											Page 93, n. 218 and 219 – Customer identities and pricing figures				
16											Page 95, paragraph 138, n. 223, 224, 225, and 226 – Customer identities and pricing figures				
17											Page 96, n.229 – Customer identity				
18											Page 102, paragraph 146 and n.256 –				

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Intuitive Sealing Requests								
2						Customer identities		
3						Page 125, list nos. 297, 300 – Customer identities		
4						Page 126, Table 3 – Pricing figures		
5						Page 129, n.259 – Customer identities		
6						Page 130, Figure 21 – Pricing figures		
7						Page 131, Figure 22 – Pricing figures		
8						Page 132, Figure 23 – Pricing figures		
9						Page 133, Figure 24 – Pricing figures		
10						Page 134, Figure 25 – Pricing figures		
11						Page 135, Figure 26 – Pricing figures		
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22	Bass Dec. Ex. 4 - Intuitive-00372053 – Intuitive-00372055	Dkt. 288.8	Dkt. 289.5	Wong Dec., Dkt. 304.2	Intuitive	Full – pricing strategy	See Wong Dec. ¶ 4 Omnibus Motion to Seal at Section III.B	GRANTED

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Intuitive Sealing Requests								
1	Bass Dec. Ex. 7 - Intuitive-00091682 – Intuitive-00091687	Dkt. 288.11	Dkt. 289.8	Wong Dec., Dkt. 304.2	Intuitive	Page 2 – Customer identity and pricing figures	<i>See Wong Dec. ¶ 4 Omnibus Motion to Seal at Section III.B</i>	GRANTED
2	Bass Dec. Ex. 15 - Intuitive-00107443 – Intuitive-00107451	Dkt. 288.19	Dkt. 289.13	Wong Dec., Dkt. 304.2	Intuitive	Intuitive-0010747 – Business goals Intuitive-00107448 – Customer identity Intuitive-00107449 – Customer identity, Pricing figure Intuitive - 00107450 – Customer identity, Pricing figure Intuitive - 00107451 – Customer identity, Pricing figures	<i>See Wong Dec. ¶ 4 Omnibus Motion to Seal at Section III.B</i>	GRANTED
3	Glubbiak Dec. Ex. 1 - Corrected Class Certification Expert Report of Elhauge	Dkt. 296.2	Dkt. 297.2	Wong Dec., Dkt. 304.2	Intuitive	Filed previously in Class Certification briefing as Ex. 1 to the Declaration of Manuel J. Dominguez. <i>See entry above for Elhauge Class Report</i>	<i>See Wong Dec. ¶ 4 Omnibus Motion to Seal at Section III.B</i>	GRANTED

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Intuitive Sealing Requests								
Glubiaik Dec. Ex. 2 - James Hughes Amended Expert Report	Dkt. 296.3	Dkt. 297.3	Wong Dec., Dkt. 304.2	Intuitive	Filed previously in Class Certification briefing as Ex. 1 to the Declaration of Ashley Bass. <i>See entry above for Hughes Expert Report.</i>	See Wong Dec. ¶ 4 Omnibus Motion to Seal at Section III.B	GRANTED	
Glubiaik Dec. Ex 3 – Elhauge Reply Report	Dkt. 296.4	Dkt. 297.4	Wong Dec., Dkt. 304.2	Intuitive	Page 12, paragraph 29 – Pricing figures Page 15, paragraph 36 and n. 44 – Pricing figures Page 16, Table 29, paragraph 37 – Pricing figures Page 17, Table 30 – Pricing figures Page 18, Table 32 – Pricing figures Page 19, Table 33 – Pricing figures Page 20, Table 34 – Pricing figures Page 21, Table 35, Table 36 – Pricing figures Page 22, Table 37 – Pricing figures Page 23, Table 38, 39, paragraph 46,	See Wong Dec. ¶ 4 Omnibus Motion to Seal at Section III.B	GRANTED	

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Intuitive Sealing Requests								
1						and n. 63 – Pricing figures		
2						Page 24, paragraph 48 – Pricing figures		
3						Page 25, Table 40 – Pricing figures		
4						Page 26, Table 41 – Pricing figures		
5						Page 27, Table 42 – Pricing figures		
6						Page 29, Table 43 – Pricing figures		
7						Page 43, paragraph 77 – Pricing figures		
8						Page 51, n. 188 – Pricing figures		
9						Pages 53–54, paragraph 97 and n. 199 – Pricing figures		
10						Page 55 – Pricing figures		
11						Page 59 – Pricing figures		
12						Page 61 – Pricing figures		
13						Page 63 – Pricing figures		
14						Page 64 – Pricing figures, customer identity		
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2	Intuitive Sealing Requests							
3						Page 65, paragraph 105 and n. 214 – Pricing figures, customer identity		
4						Page 69, paragraph 113, 114, and n. 232 – Pricing and margin figures		
5						Page 70, paragraph 116 – Pricing figures		
6						Page 76, paragraph 127 and n. 275 – Pricing figures		
7						Page 84, paragraph 142 – Customer identities, Pricing figures		
8						Page 87, paragraph 148, 149, and n. 345 – Pricing figures, customer identities		
9						Page 90, paragraph 154, and n. 361 – Customer identities, Pricing figures		
10						Page 94, paragraph 161 – Pricing figures		
11						Page 95, paragraphs 162, 163 and n. 389 – Pricing figures		
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Intuitive Sealing Requests								
9	Glubniak Dec. Ex. 6 – Mark Early Declaration	Dkt. 296.7	Dkt. 297.6	Wong Dec., Dkt. 304.2	Intuitive	Page 97, paragraph 166, and 167 – Pricing figures	Page 98, paragraph 167, 168, and n. 412 – Pricing figures	GRANTED
10	Plaintiffs' Response to Intuitive's Objection to Certain Class Certification Reply Evidence	Dkt. 301.1	Dkt. 300.2; Dkt. 313	Wong Dec., Dkt. 304.2	Intuitive	Full document – settlement negotiations and amounts	See Wong Dec. ¶¶ 4, 5 Omnibus Motion to Seal at Section III.B	GRANTED
11						Partial Page 5, lines 3-11	See Wong Dec. ¶ 5; Omnibus Motion to Seal at Section III.B	
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Asensus Surgical, Inc. Sealing Requests								
Ex. 1 to the Declaration of Manuel J. Dominguez (Elhauge Class Report)	Dkt. 267.2	Dkt. 268.2	Weingard Decl., Dkt. 304.3	Third-party Asensus Surgical, Inc.	Footnotes 606, 890, 921, and 1537 and in the body of the Elhauge Class Report to which those footnotes refer.	<i>See Weingard Dec.</i>		GRANTED
Glubiak Dec. Ex. 1 - Corrected Class Certification Expert Report of Elhauge	Dkt. 296.2	Dkt. 297.2	Weingard Decl., Dkt. 304.3	Third-party Asensus Surgical, Inc.	Filed previously in Class Certification briefing as Ex. 1 to the Declaration of Manuel J. Dominguez. <i>See entry above for Elhauge Class Report</i>	<i>See Weingard Dec.</i>		GRANTED

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Restore Robotics Sealing Requests								
3	Ex. 1 to the Declaration of Manuel J. Dominguez (Elhauge Class Report)	Dkt. 267.2	Dkt. 268.2		Third-party Restore Robotics	Restore's Highly Confidential information appears in the Elhauge Class Report in footnotes 124, 382, 397, 444, 445, 769, 839, 1014, 1025, 1068, 1110, 1114, 1194, 1230, 1242, 1587, and 1805, and in the body of the Elhauge Class Report to which those footnotes refer. These sections are identical to previously sealed sections of the Corrected Elhauge Report (see Omnibus Sealing Order at Dkt. No. 246)	This material was sealed previously in the Corrected Elhauge Report (see Parker Decl. at Dkt. No. 166 and 144)	GRANTED

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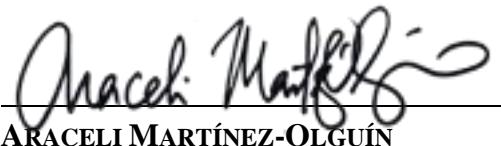
	Document or title or description	Dkt. of publicly-filed version	Dkt. of sealed version	Dkt. of decl. in support of sealing	Party seeking sealing	Sealing sought	Brief statement of reason for sealing	Granted/Denied
Restore Robotics Sealing Requests								
Ex. 1 to the Declaration of Manuel J. Dominguez (Elhauge Class Report)	Dkt. 267.2	Dkt. 268.2		Third-party Restore Robotics	Restore's Highly Confidential information appears in the Elhauge Class Report in footnotes 124, 540, 708, 1110, 1114, 1230, 1199, 1075, 1227, 1229, 1231, 1585, 1586, 1587, 1588, and 1805, and in the body of the Elhauge Class Report to which those footnotes refer. These sections are identical to previously sealed sections of the Elhauge Reply Report (see Omnibus Sealing Order at Dkt. No. 246)	This material was partially sealed previously in the Elhauge Reply Report (see Parker Decl. at Dkt. No. 166 and 144)	GRANTED	
Glubiak Dec. Ex. 1 - Corrected Class Certification Expert Report of Elhauge	Dkt. 296.2	Dkt. 297.2		Third-party Restore Robotics	Filed previously in Class Certification briefing as Ex. 1 to the Declaration of Manuel J. Dominguez. <i>See entry above for Elhauge Class Report</i>	See above.	GRANTED	

1	Document or title or description	Dkt. of publicly- filed version	Dkt. of sealed version	Dkt. of decl. in support of sealing	Party seeking sealing	Sealing sought	Brief statement of reason for sealing	Granted/ Denied
Restore Robotics Sealing Requests								
Ex. 7 to the Declaration of Manuel J. Dominguez (Parnell Rebuttal Expert Report)	Dkt. 267.8	Dkt. 268.4		Third-party Restore Robotics	Restore's Highly Confidential information appears in the Rebuttal Expert Report of Dr. T. Kim Parnell on pp. 119 - 121 and 131 - 132.	This document was partially sealed previously (see Wong Decl. at Dkt. No. 125; Parker Decl. at Dkt. No. 145; Berhold Decl. at Dkt. No. 167; Parker Decl. at Dkt. No. 172; and Parker Decl. at Dkt. No. 178)	GRANTED	

United States District Court
Northern District of California

IT IS SO ORDERED.

Dated: March 28, 2025



ARACELI MARTÍNEZ-OLGUÍN
United States District Judge